IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1658 OF 2007

Snigdha Jain ..Petitioner
Vs.
1. The State of Maharashtra and ors. ..Respondents

Ms. Amba G. Salekar and Mr. Madhukar Dalvi for petitioner.
Mr.S.R. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 04, 2007.

P.C.:

1. Heard Mr. Dalvi the learned counsel for the petitioner. In this petition filed under Article 227 of the Constitution, the petitioner is challenging the interlocutory order passed by the learned Additional Chief Metropolitan Magistrate, 9th Court at Bandra, Mumbai thereby rejecting the prayer for return of the remaining articles. The impugned order is dated 6/8/2007. The learned counsel for the petitioner, who is the original complainant, relied upon the judgment in the case of Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283] and more particularly the

following guide-lines laid down by their Lordships for exercising the powers under Section 451 of Cr.P.C. expeditiously and judiciously:-

(a) Owner of the article would not suffer because of its remaining unused or by its misappropriation.

(b) Court or the police would not be required to keep the article in safe custody.

(c) If the proper panchanama handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail.

(d) This jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

2. In the instant case, after the petitioner filed an application for return of property on 29/3/2007, the learned Additional Chief Metropolitan Magistrate passed an interim order on 16/6/2007 which reads as under:-

> "Perused the application and say filed by the Bandra Police Station along with copies of panchanamas dated 8/3/07 and 13/3/07. The learned Advocate for respondent nos.2 and 3 by putting remark on the application is not disputing return of the articles mentioned in both panchanama except cross marked against the serial numbers of the articles shown in the panchanama. Hence, in view of this interim order, the Bandra Police Station is directed to return the articles of panchanamas dated 8/3/07 and 13/3/07 by keeping custody of only those articles which are cross marked on both the panchanamas. The respondent to file

reply in respect of that balance articles on 30/6/07 and thereafter separate order for returning of those balance articles will be passed. Copy of panchanamas being marked be furnished to the Bandra Police Station for identifying the articles."

. Reply was filed by the respondent nos.2 and 3 in Application No.87/N/07 and they pointed out that Article Nos.2, 4, 12, 15, 16, 17, 18, 19 and 20 in the panchanama dated 8/3/07 and Article Nos.4, 5, 6 and 40 to 46 in the panchanama dated 13/3/07 would not fall within the ambit of "Stridhan" as claimed by the complainant and these articles were the properties of the answering respondents. In support of these contentions, copies of bills of these articles were brought on record and these bills are drawn in favour of the respondent nos.2 and 3. Hence, when there is a dispute regarding the claim of Stridhan on the basis of which the balance articles were sought to be taken over by the complainant, it was no permissible for the trial court to allow the claim for balance articles to be returned to the complainant. Section 457 of

Cr.P.C. indicates that when the issue of ownership of the articles is uncertain or in dispute are requires to be decided by leading evidence, the trial court within its powers can deny return of such articles/properties. Hence the view taken by the trial court not to return all the properties/articles, as of now, cannot be said to be either perverse or grossly erroneous and it is a possible view which does not call for interference under the supervisory powers of this court. However, the impugned order dated 6/8/2007 is cryptic and reads as under:-

> "Application disposed off and issue will be decided after framing of charge."

3. The issue raised by the complainant that the remaining articles are also Stridhan is required to be decided and as the respondents have disputed these articles to be falling in the category of Stridhan, the burden has shifted on the petitioner as well to prove that these articles fall within the ambit of Stridhan. Hence, it would be necessary for the trial

court to record evidence to decide whether the remaining artilces are Stridhan and record his finding on the basis of such evidence both documentary and oral. This shall be done as expeditiously as possible and in any case within a period of three months from today, more so keeping in mind that some of the articles are gold ornaments and they could not remain in the police custody for an indefinite period.

4. Save and except the above directions, petition is rejected.

(B.H. Marlapalle,J.)